IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 9185 of 2000

For Approval and Signature:

Hon'ble MR.JUSTICE J.R.VORA

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

JAMANABEN @ ANITABEN WIFE OF MURLIMAL SADHURAM SINDHI

Versus

COMMISSIONER OF POLICE

Appearance:

MR ANIL S DAVE for Petitioner

Mr.Udai Bhatt for Respondent No. 1, 2, 3

CORAM : MR.JUSTICE J.R.VORA

Date of decision: 07/12/2000

ORAL JUDGEMENT

#. The petitioner herein has challenged by way of this petition under Article 226 of the Constitution of India, the order of detention passed by the Police Commissioner, Ahmedabad City, Ahmedabad on 4.8.2000 in exercise of the powers conferred upon him by section 3(1) of the Gujarat

Prevention of Anti social Activities Act 1985 (PASA Act for short).

#. The petitioner came to be detained on 4.8.2000 in pursuance of the above said order.

#. From the grounds of detention it appears that the detaining authority has taken into consideration the investigation in crime registered against the petitioner under sections 3,4,5,6 and 7 of Suppression of Immoral Traffic in Women and Girls Act 1956 (hereinafter referred to as the said Act). The offence came to be registered against the petitioner on 30.7.2000. From the above material and investigation the detaining authority came to the conclusion that the petitioner was dealing in immoral traffic of women and girls and also was running a brothel house. The detaining authority also considered the statements of 2 witnesses who on assurance of anonymity gave the statement that the petitioner was trafficking illegally women and girls and was running a brothel house and the witnesses were beaten by the petitioner and his associates. From the above material the detaining authority came to the conclusion that the petitioner was an Immoral Traffic Offender within the meaning of section 2(b) of the PASA Act.

#. Learned advocate Ms. Banna Datta for the petitioner and learned AGP Mr. Uday Bhatt for the respondents were heard.

#. The detention order came to be challenged on various grounds. From the rival contentions it appears that the order of detention is vitiated by non application of mind by the detaining authority. The petitioner came to be released on bail immediately after her arrest. The detaining authority without resorting to less drastic remedy to cancel the bail merely observed in the grounds that the procedure for cancellation of bail was likely to consume more time and that the petitioner though was on bail was likely to continue her illegal and anti social activity and therefore, there was no other alternative except to pass the order of detention under the PASA Act. This court in Zubedabibi Rasidkhan Pathan vs. State of Gujarat reported in 1995 (2) GLR 1134 observed that the detaining authority was required to consider the legal position that the remedy for cancellation of bail would have been resorted to. Non resorting to this less drastic remedy was considered to be non application of mind on the part of the detaining authority and the order of detention came to be quashed. In the present case also the granting of bail was not opposed because no

material was found in this respect from record and even without resorting to the proceedings of cancellation of bail, the detaining authority simply brushed aside this remedy by merely observing that the procedure was time consuming. This is clearly non application of mind on the part of the detaining authority regarding less drastic remedy available to the detaining authority. The order of detention on this ground alone is required to be quashed and set aside.

#. In this view of the matter, the order of detention passed by the Police Commissioner, Ahmedabad City on 4.8.2000 against the petitioner under the PASA Act is hereby ordered to be quashed and set aside. The petitioner - Smt. Jamanaben @ Anitaben wife of Murlimal Sadhuram Sindhi is hereby ordered to be set at liberty forthwith if he is not required to be detained for any other purpose. Rule is made absolute.

(J.R.Vora.J)

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